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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,939	12/17/2001	Prakash Kadkade	31699.0086	2933

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EXAMINER	
WARE, DEBORAH K	

ART UNIT	PAPER NUMBER
1651	

MAIL DATE	DELIVERY MODE
10/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. *10/015,939*	Applicant(s) KADKADE, PRAKASH	
	Examiner DEBBIE K. WARE	Art Unit 1651	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *4* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *None*.
   Claim(s) objected to: *None*.
   Claim(s) rejected: *1-8,61-63 and 65-70*.
   Claim(s) withdrawn from consideration: *22,23,25 and 71-75*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Panis et al do contemplate washing of post-thawed cells to remove cryoprotectant at specified times, which would indicate to one of ordinary skill that washing can take place more than once, note page 340, lines 7-8. Also at page 341, Panis et al disclosed at lines 6-7, that survival decreased with increased amounts of cryoprotectant which would suggest to one of skill in the art to remove or to decrease the concentration of cryoprotectant at specified times as disclosed, in order to increase post-thaw viability of the cryopreserved cells. Thus, to completely remove cryoprotectant would not be desirable and would further be expected to yield less than satisfactory results as noted by Applicants. To successively reduce concentrations of cryoprotectant during the specified washings of the cryopreserved cells is clearly suggested by the reference. The argument regarding Fretz is not persuasive because they were not relied upon for the washing steps per se and Applicants appear to be arguing the references piece meal when the rejection has been applied as a combination to show the obviousness and what it well known by those of skill in the art. To combine well known steps in the art with out an unexpected result is clearly obvious over a combination of prior art references. While the argument regarding Goodrich, Jr. et al is noted because perhaps they do not teach plant cells, however, the step of washing post thaw cells is clearly well known and to do the same for plant cells is disclosed Panis et al and other references, hence whether or not Goodrich Jr. et al discloses plant cells is irrelevant because it was merely cited as an additional reference to show that washing any type of cryopreserved cell which has been thawed is an obvious modification because it is well known to wash cryopreserved cells after they have been thawed. Although the previously declaration filed of record are noted and acknowledged, as discussed above Panis et al do indeed contemplate and discuss washing cryopreserved plant cells after they have been thawed. The rejection is sustained.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/DKW/
Deborah K. Ware
AU 1651, Examiner

/David M. Naff/
Primary Examiner, Art Unit 1657